

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
IN RE NEW YORK CITY POLICING : Docket #20cv8924
DURING SUMMER 2020 DEMONSTRATIONS :
: New York, New York
February 27, 2023
----- :

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: -- In Re New York City Policing
During Summer 2020 Demonstrations, case number 20cv8924.
Starting with plaintiff's counsel, please state your
appearance for the record.

MS. LILLIAN MARQUEZ: Good afternoon, Your
Honor, this is Lillian Marquez on behalf of People of
the State of New York.

(pause in proceeding)

MR. PETER SCUTERO: Good afternoon, Judge, this
is Peter Scutero with the New York City Law Department
on behalf of the defendants.

MS. GENEVIEVE NELSON: Good afternoon, Your
Honor, Genevieve Nelson also on behalf of the
defendants.

THE COURT: Okay, I gather no one else is --

MX. REMY GREEN: No, Your Honor, a couple more
people are on. I think we just - somebody in the order
we preset did not speak up. So why don't we skip to
Payne.

MS. VERONICA SALAMA: Hi, this is Veronica
Salama from the New York Civil Liberties Union on behalf
of the Payne plaintiffs.

MS. TAHANIE ABOUSHI: Good afternoon, Your
Honor, Tahanie Aboushi appearing on behalf of the Roland

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2 plaintiffs.

3 MX. GREEN: Good afternoon, this is Remy Green
4 on behalf of the Sow plaintiffs, and for the record I
5 should appear on the transcript as Mx. Green spelled M-
6 X-period rather than Mr. or Ms. And I think we have
7 somebody from Payne on the line, but I cannot, it sounds
8 like they cannot speak.

9 MS. KATHLEEN FARLEY: This is Kathleen Farley
10 on behalf of the Gray plaintiffs.

11 THE COURT: Okay. Mr. Scutero, I gather there
12 is an application.

13 MR. SCUTERO: Yes, Judge, good afternoon.
14 Thank you for hearing us today. We are making an
15 application to adjourn the conference this afternoon due
16 to the fact that the attorney in our office who's
17 handling the matters before the Court this afternoon has
18 fallen ill and will not appear for the conference today.
19 For that reason we ask that the Court adjourn the
20 conference, and we also request that the Court give us
21 an opportunity to report back tomorrow with another
22 potential date as to when the attorney handling the
23 matter will be back to appear for the conference or when
24 another attorney in our office will be, will have the
25 opportunity to be updated and knowledgeable with the

1 facts before the Court this afternoon.

2 THE COURT: So I mean I don't want - I assume
3 we're talking about Ms. Robinson here, right?

4 MR. SCUTERO: That's correct, Judge.

5 THE COURT: Okay. You know, I don't want to
6 unduly intrude on her privacy, but is this a
7 circumstance that happened in the last hour or when did
8 this occur? I'm just wondering why we're getting this
9 application, such a late email - for the record I got an
10 email about, you know, an hour or so ago telling me this
11 application is being made.

12 MR. SCUTERO: Yes, Judge. And we do apologize
13 to the Court for the notice that was provided just a
14 little while ago as well as we apologize to plaintiffs'
15 counsel, and we did meet and confer with them as the
16 Court ordered prior to the conference and prior to
17 making this application on the record.

18 We did learn earlier that Ms. Robinson had, was
19 ill but there was a hope that because she's the only one
20 in the office who was handling this matter, there was a
21 hope that she would be well enough to appear at the
22 conference this afternoon. We did learn not too long
23 ago that she did, she's under a physician's care and
24 should has been medicated, and, therefore, it would be
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impossible for her to appear this afternoon on the Court record. And for that reason, that's why we, unfortunately, had to make such a late application to adjourn this matter.

THE COURT: And it sounds like you have no information as to when she would be likely to be well enough to proceed. It sounds like it's not tomorrow.

MR. SCUTERO: That's correct, Judge, we ask that we report back tomorrow because we're hopeful that we will find out some more information in the interim and be able to provide that information, provide information to the Court as to when we would be ready to proceed with this conference.

THE COURT: Ms. Marquez.

MS. MARQUEZ: Good afternoon, Your Honor, I'm sorry, I didn't hear your calling on me, but just to respond to what Mr. Scutero was just saying, it is also our understanding that defendants knew that Ms. Robinson was unwell as of at least this morning, and we do hope her a speedy recovery. We were also to some extent notified to that in the extent that Ms. Robinson cancelled a deposition we believe she was taking this Thursday, and so had, you know, we would have expected at that point, if they felt Ms. Robinson was unwell to

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2 do the conference today and that she was the only person
3 in the Law Department who could speak to these issues,
4 that they would have immediately moved to adjourn given
5 the late hour and, of course, (indiscernible) scheduling
6 in mind and the prejudice that plaintiffs would be
7 experiencing every day that we delay decision on, among
8 other things, (indiscernible) that defendants seek. We
9 are not in a position at this moment to consent to
10 adjournments.

11 We also have questions as to why it is that Ms.
12 Robinson, even in light of her unfortunate illness
13 that's keeping her from us today, would still be the
14 only person that the defendants are looking to rely upon
15 to speak to these issues. And it seems to date that Ms.
16 Robinson has borne the burden almost alone, except with
17 other, maybe one other paralegal helping her schedule
18 all these depositions and dealing with the motion
19 practice on this, we would hope that there'd be somebody
20 like a supervisor or another attorney who could jump in
21 to answer any questions the Court was going to ask today
22 so that we can move this case forward as it is
23 (indiscernible) on a rocket docket.

24 THE COURT: All right. I think that we can
25 live with a few days given the unusual circumstances.

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1 So the problem I'm running into is I'm handling criminal
2 matters starting next week on Monday. So I think we
3 really need to think about doing this on Friday. And if
4 they need to, you know, train a new person by Friday to
5 do this, I think that's the way we're going to have to
6 proceed. So let's look at my calendar.

7
8 (pause in proceeding)

9 THE COURT: Yeah, Friday morning. I think we'd
10 be talking 10:30. So I'll adjourn - Friday's sort of
11 the earliest because I'm busy, I'm doing criminal
12 matters also on Thursday. So Friday at 10:30. Before
13 anyone hangs up, I have something that may help in terms
14 of preparation that I can at least alert you to even if
15 I'm not hearing argument on anything.

16 So anyway, Friday at 10:30. You know, if there
17 was some absolute guarantee that, you know, Ms. Robinson
18 was going to be better by Monday and I could try
19 squeezing it in Monday morning, but that's only if you
20 know we're going to have Ms. Robinson on Monday. If
21 we're going to have to educate someone anyway, then
22 let's just do it Friday. Friday morning, 10:30.

23 All right, now let me just - sorry, someone was
24 speaking?

25 MS. MARQUEZ: Yes, sorry, Your Honor, if I may

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2 interject with a quick request given the adjournment.

3 THE COURT: Go ahead.

4 MS. MARQUEZ: Just because we have two line
5 officers scheduled in the intervening period, you know,
6 and there's obviously a pending request for a numerical
7 cut, we were hoping to have clarity about that today.

8 But given the adjournment --

9 THE COURT: Some things I can give clarity on.
10 I assumed that the disputed depositions were
11 sufficiently out in the future, that this wasn't going
12 to matter. Tell me what it's going to matter as to.

13 MS. MARQUEZ: Just as to the, so there's just a
14 general request to cap as to an arbitrary number. We
15 would just ask that the --

16 THE COURT: No, no, no, I know about the caps.
17 My question is this, if something is scheduled for
18 tomorrow, Thursday, or Friday that would affect, be
19 affected by my ruling, I'd like to make the ruling.
20 It's hard to believe the numerical cap is going to
21 affect anything you do between now and Friday. Maybe
22 I'm wrong on that. I assume it was more likely there'd
23 be a specific person scheduled between now and Friday or
24 maybe, I mean, do you see what I'm getting at, Ms.
25 Marquez?

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MS. MARQUEZ: Yes, Your Honor, I understand, and so I guess in theory if the Court were to cap the fact witnesses and this would be something we're not anticipating, but to whatever has gone forward plus five, we may reconsider going forward with the ones that are between now and Friday, if that makes sense.

THE COURT: I see, I see. Yes. No, no, that makes complete sense.

MS. MARQUEZ: Okay, and so we just hope that those, there's two scheduled, those don't be counted against any numerical cap, but if it is, or if the Court's considering that, you know, that's one piece of the prejudice I was referring to earlier.

THE COURT: Okay, I'll keep that in mind without binding myself. I believe the way I'm going to approach this is in relation to the names that have been presented so far, although I wanted to ask some questions about that. Is this from the plaintiffs' point of view, barring some unusual problems, some late identification of a witness, is this the complete list as far as you know who you want?

MS. MARQUEZ: I believe that is correct. The only thing, as I believe you're referring to the John and Jane Does who have yet to be identified, yes, that

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would be the category of people who have, who might be joining the noticed list.

THE COURT: How many John and Jane Does are there?

MS. MARQUEZ: So there's a --
(interposing)

THE COURT: -- let me put it this way. Ones that could realistically be expected --

MS. MARQUEZ: That's what I was --

THE COURT: -- deposed.

MS. MARQUEZ: That was what I was about to get because I believe there are dozens of John and Jane Does between I believe Roland and Gray teams and potentially the Sow team as well. But in realistic terms, I think it's only a handful, and I'm hoping that my, the other plaintiffs' counsel will chime in (indiscernible) and accurate. But we are still receiving document production. In some places, you know, for instance, IAB files that sometimes reveal office identification that was not previously known to us. And so I think, you know, so just to give the Court an idea, Roland has 35 unnamed defendants, but, again, I think in all likelihood it would only be a handful of those unidentified who will realistically be identified in the

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2 near future.

3 THE COURT: All right. I mean the way, and
4 without binding myself, the way I'm probably going to be
5 dealing with this is to look at this in relation to the
6 disputed people and say either you don't get certain
7 disputed people or you get them all or say among this X
8 number of disputed people - actually I want to talk to
9 you about that - you know, your number X, 15 or
10 whatever, some number or you get them all or statement.
11 In other words, I don't think I'm going to be sitting
12 and counting up how many you did and so forth. I think
13 I'm going to do it in relation to the disputed ones.

14 So, in other words, it's not going, it should
15 not affect what you do tomorrow or the next day I don't
16 think. I mean is it the case that there are people on
17 the disputed list that are more important to you than
18 the ones you'd be doing today or tomorrow, I'm sorry,
19 tomorrow or the next day?

20 MS. MARQUEZ: So if we're talking about a cap,
21 we have, as I was mentioned, some line level officers,
22 and, generally speaking, these higher level deponents,
23 of course, and we've said this before, are very
24 important to our Monel claims. And so if we were
25 presented with sort of the dilemma of choosing between

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those two, I would say the higher levels are more important than a line level office, but, of course, if that's not the dilemma we're facing, we want to go forward with the two we have scheduled.

THE COURT: Well, there's no reason not to go forward with the two that are scheduled because I'm not going to count those two as it were or three, whatever it is that's happening between now and Friday. I'm not --

MS. MARQUEZ: Thank you.

THE COURT: I won't count them against you, so let's not worry about that right now. While I have you, maybe you'll know the answer to this question. I'm trying to figure out how many are on the disputed list. So I had a few problems. One was, and I assume this is some typographical error. Maybe the plaintiffs (indiscernible). Joseph Resnick, number 16, and Michael Sher, number 42, were on, were listed in docket 841 which was the defendant's letter about who they don't want to be deposed, and yet there isn't an X next to their name disputed. Do you think that's a typo?

MS. MARQUEZ: Yes and no. So just - this is Lillian again, Ms. Marquez. So for Officer Sher, we did offer to withdraw him as a witness provided two things.

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One that defendants provide the deposition transcript that they alerted to us recently was created in another case and that they formally state in writing that they would not object to our use of that transcript here. They've not done those two things. And so it's still lingering as an offer. It seems that Ms. Robinson assumes it was withdrawn without those two things being accomplished, and so perhaps took that out of contention in her chart that she filed with the Court, and I think it probably is just a typographical error as to the, as to Resnick.

THE COURT: So Resnick you think probably should have an X?.

MS. MARQUEZ: Correct.

THE COURT: Okay. All right, and then my next question was there, and you probably have no idea, but you've been so helpful so far, maybe you will. There are three people on here that are not specifically named in the defendant's letter, 18, O'Hare and two others, yes, 41, Kovalik, and 43, Fiero. Any idea why they're not named in defendant's letter?

MS. MARQUEZ: Is Your Honor referring to the chart that Ms. Robinson filed very recently?

THE COURT: Yes, yes, I'm referring - yes,

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2 exactly.

3 MS. MARQUEZ: I'm sorry, I'm just trying to
4 pull that up so I can see what you're saying with regard
5 to Fiera.

6 THE COURT: Well, I'm just looking at her chart
7 from yesterday, and she has as disputed 18, 41, and 43.
8 And with respect to everyone else disputed, they're all
9 named and discussed in her original letter, you know,
10 docket 841, and those three names are not there.

11 MS. MARQUEZ: I see.

12 THE COURT: I have a theory on two of them --

13 MS. MARQUEZ: Okay, so I --

14 (interposing)

15 MS. MARQUEZ: So, okay, I'll give you the brief
16 history. So Michael Kovalik is a defendant in another
17 case, and so I think there's been an overarching
18 objection to the People's case. The plaintiff obviously
19 is People of the State of New York. We've used witness
20 incidents as opposed to plaintiff's incidence. And so
21 one of those involve Officer Kovalik. He's been deposed
22 already, and so it's a moot point I would say. But they
23 did, you know, have him ostensibly under this general
24 objection of he's a defendant in another case but never
25 pursued that and produced him. I think it's a nonissue.

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But you're correct, Your Honor, he did not appear in the original letter motion.

THE COURT: In your theory he shouldn't be on this chart because he's not, to use the title of this chart, depositions to be taken. But you're seeking to have taken.

MS. MARQUEZ: Right, because this was filed the 27th, that's the day of his deposition. So perhaps there was some, you know, timing issues and --

THE COURT: I see, okay. So I'll take that --

MS. MARQUEZ: It's just a little outdated. And so then the D.I. O'Hare, the objection there, again, something similar, but he was initially noticed by a Minette (phonetic). That was Rule, if I'm saying it correctly, 54, but because it relates to the false arrest of a legal observer which is one of the People's claims, we've maintained that deposition. And so there's a general objection, but, again, defendants never raised that with specificity.

D.I. O'Hare is also one of the witnesses for whom the People offered RFA's that if, you know, essentially trying to lay out a few facts we needed to confirm with defendants, and they've refused to admit those, and so we're going forward with that deposition.

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And so to the extent Ms. Robinson was trying to convey that sort of objection, I think that's why she marked it, but it was not laid out in the motion as I recall it.

THE COURT: Okay, so you don't - I'm not sure I followed all of that. There was a little bit more inside baseball than I think you realized.

MS. MARQUEZ: Okay.

THE COURT: Do you think --

MS. MARQUEZ: In other words --

THE COURT: This is a deposition that you want and that you think she's objecting to, and it wasn't in the letter.

MS. MARQUEZ: That's right.

THE COURT: Okay. And how about the last one which is Fiero, 43.

MS. MARQUEZ: Fiero, I actually do not know the objection to that one. I will note that that's one of the defendants that, excuse me, one of the witnesses and I believe a named defendant that defendants have repeatedly cancelled. And that has become an issue that I won't bring up in detail right now, but three times they've cancelled Fiero. I'm not aware of any objection to his deposition however.

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2 THE COURT: Okay. All right, well, that was
3 helpful to the degree I thought it might be since you're
4 not the one who wrote this letter. I assume, Mr.
5 Scutero, you have nothing else to offer on those
6 questions just asked.

7 MR. SCUTERO: Yeah, I apologize, Judge, I
8 don't.

9 THE COURT: Okay.

10 MR. SCUTERO: I just don't know enough about
11 the issues to --

12 THE COURT: No, that's fine, that's fine. All
13 right --

14 MS. MARQUEZ: And, Your Honor, if I may offer,
15 just looking cursorily at this, there are a few more
16 here that are slated to be taken but they have been
17 already taken, so it's not, you know, I know this is a
18 moving target. But, for instance, number 24, Hawkaday,
19 was already taken.

20 THE COURT: Right, okay. If they've been taken
21 and they're not disputed, then I don't have that much
22 interest.

23 MS. MARQUEZ: Okay.

24 THE COURT: Let me look at what else we have
25 here. Have the plaintiffs - this is not related to the

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issue before me, but I'm just curious because it relates to timing I suppose. Or not to timing but to doubletracking. Are there plaintiffs remaining to be deposed, I mean I'm sure - you may not know their minds, but I assume they've told you which plaintiffs they want to depose. And have they - I mean I don't know if there's any witnesses that you've identified they want to have deposed, but I assume that whatever it is, they've done it by now. And has all of that been accomplished and if not how many remain?

MS. MARQUEZ: On this point defendants may know the best. I am aware of one plaintiff, Jason Donnelly, who defendants recently cancelled last minute to do an issue on their end, as I understand it. But I believe everybody else has been completed.

THE COURT: Okay. Did they ask to depose witnesses or just plaintiffs?

MS. MARQUEZ: Just plaintiffs.

(pause in proceeding)

THE COURT: Okay. I think there's nothing else we can really do today. My plan is to probably go through each of the identified people in part 4 of docket 841 and get a better sense of whether they're duplicative or not. I also am going to want to talk

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2 about a process for raising what essentially amounts to
3 a protective order with respect to I guess six people,
4 but the two mayors, the two police commissioners, and
5 the two legal chairs people, and whether people want to
6 rely on what's here, whether we should be doing it based
7 on the record now, whether we should be waiting until
8 some other depositions happen and, if so, which ones.
9 So that's more of a process issue. I would want to go
10 through to some degree the people listed in Section 4.

11 I guess I don't foresee doing some numerical
12 calculation under 30(a)(2)(A). I think I'm going to be
13 more focused on, you know, 26(b)(2)(C) in terms of
14 figuring out what's unduly burdensome and appropriate
15 and nonduplicative and so forth. And probably in
16 relation to the people (indiscernible) more than
17 anything else. But I mean this is certainly keeping in
18 mind the fact that there's been a number of depositions.

19 I think that's all we can do today. We're
20 going to adjourn - go ahead.

21 MS. MARQUEZ: Apologies, Your Honor, this is
22 Ms. Marquez again. Just with regard to Section 4 which
23 goes into the witnesses you were referring to for
24 Friday's conference, if the Court would allow - I'll be
25 speaking of it again, but some of those witnesses there

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2 might be a bit of a factual depth that I can't get into.
3 If at the time I need to call upon a colleague from one
4 of the other teams to speak, I was wondering if the
5 Court would allow that indulgence.

6 THE COURT: Yes, that's fine as long as we keep
7 it narrowed in that manner.

8 MS. MARQUEZ: Yes, thank you.

9 THE COURT: Okay, so Friday 10:30 unless
10 there's some thought that we can pull this off on Monday
11 because Ms. Robinson wouldn't be available Friday but
12 would be available Monday. And I think that's it from
13 my end. Anything else from the defendant's point of
14 view?

15 MR. SCUTERO: No, that's it, Judge, thank you.

16 THE COURT: Anything from plaintiffs?

17 MS. MARQUEZ: No, Your Honor, just --
18 (interposing)

19 THE COURT: Finish, Ms. Marquez, then we'll
20 hear from whoever.

21 MS. MARQUEZ: I think Mx. Green was about to
22 interject about scheduling issues we've been dealing
23 with. I did want to correct this chart that I filed
24 because soon after I filed it, the defendants cancelled
25 four depositions, all of which, three of which were

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2 30(b)(6) and the only 30(b)(6) to be scheduled to date.
3 And just because it's not been exhausted, I won't bring
4 it to the Court's attention in detail, but just to flag
5 that the scheduling issues we've been experiencing we
6 will be trying to work out first, but I just wanted to
7 correct that filing.

8 THE COURT: Mx. Green.

9 MX. GREEN: Yes, Your Honor, it's kind of a
10 narrow thing, but as Ms. Marquez said, Ms. Robinson has
11 kind of been dealing solo with scheduling. I think
12 we're do another batch of depositions on Friday, and
13 obviously if Ms. Robinson is out of the office and not
14 available, I don't know how we're going to get those,
15 and I just wanted to raise that as a potential big issue
16 I suppose in terms of keeping things moving.

17 THE COURT: All right, well, Mr. Scutero, you
18 know, I have a separate order about what you have to do
19 every Friday, and I don't think, you know, an illness
20 with one person could possibly justify not scheduling
21 depositions. So if that helps you make plans for what
22 you have to do on Friday, take that as a hint.

23 MR. SCUTERO: That's understood, Judge --

24 THE COURT: Do you understand what I'm saying?

25 MR. SCUTERO: Yes, Judge, things are to go as

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they have been planned by the Court, and we have every -
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(interposing)

THE COURT: I have an order that says on Friday you have to, I don't have it in front of me, that you have to schedule a certain number of depositions. It's usually either five or ten. So that's going to have to happen on Friday, notwithstanding the illness of one person.

MR. SCUTERO: And that's understood on our end, Judge, and although scheduling depositions is not under my purview, it's my understanding that we have been meeting that requirement and then some, and that we have been actually scheduling --

THE COURT: I don't want to get into what you've been doing, and I'm not saying it's under your purview. You're the only person speaking for the City. If you need to tell the Corporation Counsel, feel free to tell the Corporation Counsel because I don't care who you tell. Even if it's not your responsibility, someone has to be told.

MR. SCUTERO: Yes, and, Judge, we'll meet the requirements set by the Court.

THE COURT: Okay. That's it from my end.

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Anything else from defendants?

MS. NELSON: No, Your Honor.

THE COURT: Ms. Marquez, anything?

MS. MARQUEZ: No, thank you, Your Honor.

THE COURT: Okay, thank you, everyone, good
bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

CAROLE LUDWIG

Date: April 29, 2023